

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**GLEN DEAN BARRINGTON**

Claimant

VS.

**GEORGIA PACIFIC CORPORATION**

Respondent

Self-Insured

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Docket No. 223,480

**ORDER**

Respondent appeals from a preliminary hearing Order for Compensation entered on August 12, 1997, by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

The issues to be considered on appeal are whether claimant gave timely notice of an occupational disease and whether the Administrative Law Judge exceeded his jurisdiction in authorizing John H. Rudersdorf, M.D., as the treating physician.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the briefs submitted by the parties, the Appeals Board finds that the Order by the Administrative Law Judge should be affirmed.

Claimant worked for respondent from approximately April 1973 through March 1997. Claimant alleges that he suffered silicosis as a result of exposure to dust, gypsum and other irritants during his employment with respondent. Claimant left his employment with respondent on March 18, 1997, at the recommendation of Dr. Rudersdorf. Since leaving his job with respondent, claimant's condition has improved.

Claimant testified he had not experienced breathing problems before working for respondent. However, he also testified that he had prior breathing problems when working at a feed store due to the grain dust. Although he first sought medical treatment for his

breathing problems in 1994, it was not until December 1996 that claimant was advised by Dr. Rudersdorf that he had silicosis and that it was most likely related to his work. On March 18, 1997, Dr. Rudersdorf gave claimant a note recommending that claimant seek work in a less dusty environment. Claimant presented respondent with the note from Dr. Rudersdorf on March 18, 1997, but did not specifically claim workers compensation benefits until May 27, 1997.

K.S.A. 44-5a17 requires that notice of an occupational disease be given within 90 days of disablement therefrom.

K.S.A. 44-5a04(a) defines "disablement" as "the event of an employee becoming actually incapacitated, partially or totally, because of an occupational disease, from performing the employee's work in the last occupation in which injuriously exposed to the hazards of such disease . . ."

Claimant served his claim for compensation on respondent within 90 days after he left his employment. There is also some indication in the record that, at least by the date of claimant's termination, respondent had actual knowledge of claimant's condition and that it was work-related.

Respondent relies upon K.S.A. 44-520 to argue that notice must be given within ten days of the accident. Claimant argues that K.S.A. 44-520 is not applicable to occupational disease claims. The Appeals Board agrees with claimant that K.S.A. 44-5a17 is the applicable statute. The date of disablement is the last date of injurious exposure. In this case, the last injurious exposure was claimant's last day of work for respondent.

The Appeals Board, therefore, concludes that claimant gave notice within 90 days after his last day of employment for respondent and less than 90 days after the last date that he was exposed to dust and other irritants in his employment. The notice was, therefore, timely and the Order For Compensation by the Administrative Law Judge should be affirmed.

Respondent also raises an issue concerning the Administrative Law Judge's order authorizing Dr. Rudersdorf as the authorized treating physician. Respondent contends that the Administrative Law Judge exceeded his jurisdiction because respondent was providing medical treatment and claimant did not allege that the services of the health care provider furnished by respondent were unsatisfactory. While it is true that there was no motion before the Administrative Law Judge for a change of authorized treating physician, the fact that respondent was denying that the claim was compensable shows that medical treatment was not being provided at the time of the hearing. Respondent was not providing authorized treatment; rather, respondent offered to provide treatment with Gerald R. Kerby, M.D., if the claim was found compensable by the Administrative Law Judge. Although not required to authorize the claimant's choice of physician, the Administrative Law Judge did not exceed his jurisdiction by ordering treatment from Dr. Rudersdorf.

Jurisdiction is described in Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied*, 221 Kan. 757 (1977), as follows:

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. (Citations omitted.)

The Workers Compensation administrative court has limited jurisdiction. Its subject matter jurisdiction is limited to cases involving accidental injury arising out of and in the course of employment. Whether claimant suffered accidental injury and whether the injury arose out of and in the course of employment are, therefore, designated in K.S.A. 44-534a as jurisdictional issues. Personal jurisdiction requires notice and timely written claim. Notice and written claim are designated as jurisdictional issues under K.S.A. 44-534a. Whether the administrative law judge must, in a given set of circumstance, authorize treatment from a physician chosen by respondent or from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the administrative law judge. The administrative law judge may decide this question and has the jurisdiction to decide it wrongly.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the application for review of the order authorizing medical treatment from Dr. Rudersdorf is dismissed, but the finding and conclusion by the Administrative Law Judge that notice was timely given should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1997.

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
James B. Biggs, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director